

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Bakkila Plumbing and Heating LLC;
Bordertown; Broken Spur Land & Livestock;
Claudia Coleman; Maureen K. Harr; Robert L.
Harr; Valerie R. Hogan; Patricia A. Jacobs;
Robert C. Jacobs; JFLI Trust; Joan F. Luciano
2006 Irrevocable Trust; Meadowvale
Farmstead LLC; Mark A. Stoddard; ~~USA;~~
~~USA (General Services Administration);~~
Von Moltke Revocable Trust; Russell Yocum;
Chad P. Younglove

CASE 76D-0029-R-2022
76D 211638-00

OBJECTOR: USA (General Services Administration)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 211638-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim did not receive any objections or notices of intent to appear. This claim also received an objection filed by the United States of America (USDA Forest Service).

The Court consolidated this claim into Water Court Case 76D-0029-R-2022 on July 28, 2022. The Court scheduled an initial status conference for the parties to discuss how to proceed. Claimants did not attend this conference. The United States requested the Court set a deadline by which the United States would file proposed modifications with supporting evidence. On December 7, 2022, the United States filed a response. The Court issued an order on December 9, 2022 setting a Show Cause Deadline by which Claimants were to file information showing cause why the Court should not make the United States' proposed modifications. The Court did not receive any filings by the deadline. The proceedings of this case and information discussed in this Master's Report, including maps, may be found in the Court's Full Court Enterprise system.

FINDINGS OF FACT

1. Claim 76D 211638-00 appeared with the following issue remarks:

THIS CLAIM WAS NOT INCLUDED IN THE BASIN 76D
TEMPORARY PRELIMINARY DECREE ISSUED 03/22/1984.

CLAIM FILED LATE 12/30/85. IN ADDITION TO BEING
SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED
WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED
ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO
CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE
SECTION 85-2-221 MCA.

USDA AERIAL PHOTOGRAPH NO(S). 279-33 , DATED 08/10/1979 ,
APPEARS TO INDICATE 195 ACRES IRRIGATED. A DESCRIPTION
OF THESE ACRES IS IN THE CLAIM FILE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

2. The United States' proposed modifications to this claim are as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00 <u>30.00</u>	4	NWSW	1	37N	27W	LINCOLN
2	2.00	3	NESW	4	37N	27W	LINCOLN
3 <u>2</u>	27.00 <u>23.00</u>		S2SW	1	37N	27W	LINCOLN
4 <u>3</u>	6.00	1	NESE	2	37N	27W	LINCOLN
5 <u>4</u>	24.00		SESE	2	37N	27W	LINCOLN
6 <u>5</u>	1.00		NWNWNW	12	37N	27W	LINCOLN
7 <u>6</u>	28.00		NENE	11	37N	27W	LINCOLN
8 <u>7</u>	6.00		E2NWE	11	37N	27W	LINCOLN
9 <u>8</u>	11.00		W2SENE	11	37N	27W	LINCOLN
10 <u>9</u>	18.00		SWNE	11	37N	27W	LINCOLN
11 <u>10</u>	35.00		N2SE	11	37N	27W	LINCOLN
12 <u>11</u>	18.00		W2SWSE	11	37N	27W	LINCOLN
13 <u>12</u>	1.00		SENESE	11	37N	27W	LINCOLN
14 <u>13</u>	10.00		E2SESW	11	37N	27W	LINCOLN
Total:	227.00 <u>213.00</u>						

Add an information remark indicating the “place of use and point of diversion occur entirely on private land.”

Remove the United States from the ownership of this claim.

3. The United States included several marked-up maps and an edited abstract to support its proposals.

4. The United States indicates if the Court implements the above-described modifications the objection would be resolved.

5. No Claimant indicated disagreement with the proposed modifications.

6. Claim 76D 211638-00 should be modified as requested by the United States. However, the maximum and total acres should be 211.00, as the acreage does not add up to 213.00 acres.

7. The issue remarks should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court may issue sanctions against any party who fails to comply with a Court order. Sanctions may include dismissal or modification of a claim according to information before the Court. The sanction must be just. Rule 22, W.R.Adj.R.

5. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The Court may modify the above-captioned claim as a sanction pursuant to Rule 22, W.R.Adj.R. because Claimants did not participate in case proceedings or oppose United States’ requests. The modifications are supported by information in the record which overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Bakkila Plumbing and Heating LLC
PO Box 2358
Eureka, MT 59917

Bordertown
PO Box 1050
Eureka, MT 59917-1050

Broken Spur Land & Livestock Inc.
PO Box 3043
Winnemucca, NV 89446-3043

Claudia Coleman
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Valley Village, CA 91607

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Robert L. Harr
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73 Poverty Flats Rd
Eureka, MT 59917

Patricia A. Jacobs
Robert C. Jacobs
69 Terry Ln
Eureka, MT 59917

JFLI Trust
Joan F. Luciano 2006 Irrevocable Trust
c/o Michael J. Luciano, TTEE
PO Box 1050
Eureka, MT 59917

Meadowvale Farmstead LLC
Mark A. Stoddard
295 Tally Lake Rd
Whitefish, MT 59937

Von Moltke Revocable Trust
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Brush Prairie, WA 98606-4514

Russell Yocum
PO Box 2307
Eureka, MT 59917

Chad P. Younglove
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Eureka, MT 59917-2307

Last Order:

USA
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D

Water Right Number: 76D 211638-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:

BORDERTOWN
PO BOX 1050
EUREKA, MT 59917 1050

VALERIE R HOGAN
73 POVERTY FLATS RD
EUREKA, MT 59917

MAUREEN K HARR
PO BOX 2260
EUREKA, MT 59917

ROBERT L HARR
PO BOX 2260
EUREKA, MT 59917

ROBERT C JACOBS
69 TERRY LN
EUREKA, MT 59917

PATRICIA A JACOBS
69 TERRY LN
EUREKA, MT 59917

BROKEN SPUR LAND & LIVESTOCK INC
PO BOX 3043
WINNEMUCCA, NV 89446 3043

LUCIANO, JOAN F 2006 IRREVOCABLE TRUST
% MICHAEL J LUCIANO TTEE
PO BOX 1050
EUREKA, MT 59917 1050

CHAD P YOUNGLOVE
PO BOX 2307
EUREKA, MT 59917 2307

JFLI TRUST
PO BOX 1050
EUREKA, MT 59917

MARK A STODDARD
295 TALLY LAKE RD
WHITEFISH, MT 59937 8396

Owners: CLAUDIA COLEMAN
5227 HERMITAGE AVE #311
VALLEY VILLAGE, CA 91607

BAKKILA PLUMBING AND HEATING LLC
PO BOX 2358
EUREKA, MT 59917 2358

MEADOWVALE FARMSTEAD LLC
295 TALLY LAKE RD
WHITEFISH, MT 59937 8396

VON MOLTKE REVOCABLE TRUST
26022 NE HINNESS RD
BRUSH PRAIRIE, WA 98606 4514

Priority Date: JUNE 30, 1890

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 12/30/85 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 4.46 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 211.00

Source Name: PHILLIPS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4	NWSW	1	37N	27W	LINCOLN

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: LAMEY DITCH

Period of Use: MAY 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00	4	NWSW	1	37N	27W	LINCOLN
2	23.00		S2SW	1	37N	27W	LINCOLN
3	6.00	1	NESE	2	37N	27W	LINCOLN
4	24.00		SESE	2	37N	27W	LINCOLN
5	1.00		NWNWNW	12	37N	27W	LINCOLN
6	28.00		NENE	11	37N	27W	LINCOLN
7	6.00		E2NWNE	11	37N	27W	LINCOLN

8	11.00	W2SENE	11	37N	27W	LINCOLN
9	18.00	SWNE	11	37N	27W	LINCOLN
10	35.00	N2SE	11	37N	27W	LINCOLN
11	18.00	W2SWSE	11	37N	27W	LINCOLN
12	1.00	SENESEW	11	37N	27W	LINCOLN
13	10.00	E2SESEW	11	37N	27W	LINCOLN
Total:						211.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

211638-00 211639-00

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.